

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

January 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

STATEWIDE

SUBJECT: RECOMMENDATION FOR FINAL APPROVAL FOR
ADOPTION OF RULE AMENDMENTS TO CHAPTER 13-233,
HAWAII ADMINISTRATIVE RULES, AS RELATING TO
SMALL BOAT HARBORS MOTOR VEHICLE AND PARKING
RULES; DENIAL OF REQUESTS FOR CONTESTED CASE
HEARINGS BY ARNOLD L. LUM, GARRY KAAIHUE, AND
MELISSA MALULANI LING-ING.

PURPOSE Amend and update administrative rules to allow the division the
ability to effectively manage motor vehicle parking within the
small boat harbors and related facilities and increase fees to
provide the division additional funds to improve the state boating
facilities and fund other Boating program activities.

REMARKS For years, the department has received complaints regarding
vehicle parking problems at the Ala Wai small boat harbor that
included vehicles left unattended for extended periods, hotel
employees and construction workers parking in the harbor, and
illegal activities taking place within the harbor after hours. Three
public informational meetings were held at the surrounding hotels
that included the Hilton Hawaiian Village, Hawaii Prince, and
Ilikai hotels. The purpose of the meetings was to determine
whether any changes to the existing parking rules were necessary
to address the vehicle parking issues. The harbor tenants that
attended the meetings stated that no changes were necessary and
the general public felt that the parking at the harbor should remain
free. Because of the amount of complaints that the department had
received regarding vehicle parking prior to the first public
informational meeting, feedback from the informational meetings
did not appear to be an accurate representation of the majority of
the harbor tenants. A letter was sent to all the harbor tenants at the

time to their address of record asking whether they were in favor of a parking management plan at the harbor. The department had an approximate response rate of 20% with 60% of the responses in favor of a parking management plan. Two additional public informational meetings were held to gather input on the type of plan that should be implemented. The general public stated that they wanted free parking and they should be able to park in the harbor for free. The boaters at the meetings stated no changes were necessary and the parking fees should not be raised. From the information received, the department proposed to set aside 130 parking stalls at the old heliport area within the Ala Wai small boat harbor as free parking for harbor and recreational use, reduce the maximum vehicle parking time from 72 hours to 24 hours unless otherwise designated, and set the vehicle parking fees equal to City and County fees. To implement the plan, the appropriate Hawaii Administrative Rules (HAR) are to be amended.

After publication of notice in newspapers of general circulation, public hearings were held in each district between December 19, 2007 and December 28, 2007. The public comment period by written letters, faxes, and emails was open through January 04, 2008. 190 people attended the public hearings, ranging from 4 persons on Hawaii Island to 81 on Oahu. Testimony received by the department included 19 hand delivered, 13 by US Postal Service, and 21 by email.

Testimonial comments generally received were as follows:

- *Opposed to paid parking*
- *Felt that access to the beach was going to be lost*
- *Concerned with parking time limits*
- *What will the additional revenue be used for?*
- *Concern that the Hilton Hawaiian Village would monopolize parking*
- *Violation of Public Trust Doctrine*
- *E.I.S. needed*
- *Requested contested case hearing*

In response to the comments and requests gathered at the public hearings and from submitted testimony, it is the opinion of the department that the proposed amendments to chapter 13-233, HAR, are protective in nature, prevent a monopoly on parking usage, allow a broader spectrum and number of users, and do not prevent the public from either accessing or enjoying small boat harbor facilities, the shoreline, or the waters of the State (including Waikiki) and thus do not appear violative of the Public Trust Doctrine. The proposed amendments only serve to

modify conditions of an existing use for the affected areas. Since no new use or development of parking areas is proposed the rule amendments do not trigger environmental review under either chapter 343, HRS, or chapter 205, HRS. Monies generated from parking fees are deposited to the boating special fund.

REQUESTS FOR A CONTESTED CASE

With regard to the requests for a contested case hearing as made by various individuals during the public hearing process, including written requests received from Arnold L. Lum, Garry Kaaihue, and Melissa Malulani Ling-Ing, each as individuals and as members of Common Ground Hawai'i, an unincorporated association; the department consulted with the Office of the Attorney General. They generally advised the department to deny the requests for contested cases as untimely and due to lack of standing.

There is no statute or rule specifically calling for a contested case in the context of rulemaking, so the petitioners apparently rely on the Constitution as the basis for their contested case requests, via due process clauses of either state or federal constitutions. If so, the two-step analysis required by Alejado v. City and County of Honolulu, 89 Haw. 221, 971 P.2d 310 (1999) involves firstly, whether the particular interest is "property" within the meaning of due process under the Constitution, and secondly, the court then determines what specific procedures are required to protect the interest asserted.

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Alejado, 89 Haw. at 227, 971 P.2d at 316 (citing Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972)).

In their written requests for a contested case hearing, Petitioners have failed to show that they have an interest in the proposed rule changes that rises to the level of a property interest. The interest asserted by Petitioners as members of an association is with regard to access to the ocean for recreational purposes. The interests asserted by Petitioners as Native Hawaiians are regarding "traditional and customary Hawaiian practices" specifically regarding access to fishing and surfing. The claimed affected interest is that parking access in the area is too expensive – constituting a barrier to ocean access, and that the

nearest free parking is several miles away toward the Natatorium. [Note: current administrative rules adopted in 1994 already allow for the charging of parking fees of forty cents per hour by parking meters. Because meters were never installed parking currently appears to be free.]

Prior advice from the Attorney General's office also indicated that chapter 91, HRS, rulemaking procedures generally do not constitute an action triggering chapter 343, HRS, review; and that administrative rules affecting the coastal zone management area (CZMA) must be consistent with the CZMA program. The department believes the proposed rule amendments are not inconsistent with the purposes of the CZMA (including considerations of ecological, cultural, historic, esthetic, recreational, scenic, and open space values).

Based on advice and analysis received from the Attorney General's office, the Petitioners' requests for a contested case hearing should be denied.

Parking fees are anticipated to be handled by common collection boxes with slots corresponding to parking space numbers, with regular 24-hour patrols, rather than using a commercial booth attendant or meters. The department does suggest, however, that the parking area, commonly known as "the helipad" comprised of 130 parking stalls seaward of the Hilton Lagoon be protected as beach access parking. Parking rules already in effect allow for the helipad parking area to be metered, with a four-hour parking time limits. Rather than changing the present arrangement and charging for parking as current rules allow, the department further recommends that any future changes to the parking arrangement in this area be approved by the Board of Land and Natural Resources.

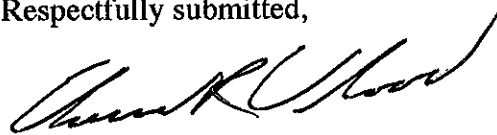
The Small Business Regulatory Review Board, in a nearly unanimous vote, has forwarded their recommendation to the Governor stating that this rule amendment has little or no impact on small business.

During this process, the department discovered that the County employee parking rate for unassigned/uncovered vehicle parking is \$25.00 per month not \$35.00. The department intends to charge the lesser of the two rates (\$25) and therefore recommends making a minor change to the language in the amendment from "equal to City and County rates" to "equal to or less than City and County rates" in order to allow the department more flexibility when determining parking rates.

RECOMMENDATION

- 1) That the Board approve and adopt the amendments to Chapter 13-233, Hawaii Administrative Rules, and compilation, with revisions and as per administrative rulemaking procedures, forward them to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.
- 2) That these final proposed changes be submitted, in final form, to Office of the Attorney General for review before they are submitted to the Governor's Office.
- 3) All other changes or conditions as may be prescribed by the Chairperson to best serve the interest of the State be incorporated into these amendments.
- 4) That the Board deny the individual requests for a contested case hearing based on a lack of standing.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen
Chairperson and Member

Rules Amending Title 13
Hawai'i Administrative Rules

(date)

1. Chapter 233 of Title 13, Hawai'i Administrative Rules, entitled "MOTOR VEHICLE AND PARKING RULES" is amended and compiled to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART I SMALL BOAT HARBORS

CHAPTER 233

MOTOR VEHICLE AND PARKING RULES

Subchapter 1 Motor Vehicle Rules

§13-233-1	General statement; traffic code and county ordinances
§13-233-2	Licensing and safety inspection
§13-233-3	Operation of motor vehicles
§13-233-4	Traffic controls
§13-233-5	Speed restrictions
§13-233-6	Parking
§13-233-7	Public parking
§13-233-8	Removal of vehicles
§13-233-9	Application
§13-233-10	Parking in construction areas and on special occasion
§13-233-11	Repealed

§13-233-12 Repealed
 §13-233-13 Operation, parking, or storage of
 bicycles or play vehicles
 §13-233-14 Repealed
 §§13-233-15 to 13-233-19 (Reserved)

Subchapter 2 Paid Parking Zones

§13-233-20 Establishment of paid parking zones
 §13-233-21 Repealed
 §13-233-22 Repealed
 §13-233-23 Repealed
 §13-233-24 Repealed
 §13-233-25 Repealed
 §13-233-26 Charges for parking
 §13-233-27 Charges for enclosure or obstruction
 of paid parking stall, incidental to
 construction, etc
 §13-233-28 Harbor tenants - parking permits
 §13-233-29 Eligibility for parking permits;
 fee per vehicle
 §13-233-30 Replacement of mutilated stickers
 §13-233-31 Transfer of permits
 §13-233-32 Cancellation of permits
 §13-233-33 Revocation of parking permits
 §13-233-34 Violations and penalties
 §§13-233-35 to 13-233-39 (Reserved)

Subchapter 3 Vessel Owner Parking Zone

§13-233-40 Repealed
 §13-233-41 Repealed
 §13-233-42 Repealed
 §13-233-43 Repealed
 §13-233-44 Violations and penalties

Historical note: This chapter is based on
 motor vehicle and traffic rules, parking meter zones,
 and vessel owner parking zones of the small boat
 harbors rules, effective November 5, 1985, and as

amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction of recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

SUBCHAPTER 1

MOTOR VEHICLE RULES

§13-233-1 General statement; traffic code and county ordinances. The [traffic code] Statewide Traffic Code, chapter 291C, Hawai'i Revised Statutes, as amended, and any other applicable ordinances of the particular county in which a small boat harbor is located, shall apply to the operation of motor vehicles on the parking areas and roadways of a small boat harbor just as though the parking areas and roadways are a part of the public streets, roads, or highways of the particular county involved, and by reference, are incorporated in these rules and made a part hereof as though fully recited in these rules. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-2 Licensing and safety inspection. No vehicle shall be operated or parked at a small boat harbor unless such vehicle is currently licensed by the appropriate governmental agency and has the required evidence of safety inspection. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-3)
(Imp: HRS §§200-2, 200-3)

§13-233-3 Operation of motor vehicles. No motor vehicle shall be operated in a small boat harbor in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution or

circumspection, or at a speed or in a manner which endangers or is likely to endanger person or property, or while the operator thereof is under the influence of [intoxicating liquor, or narcotic or habit forming drugs] an intoxicant as defined under chapter 291E, Hawai'i Revised Statutes, or if the vehicle is so constructed, equipped, loaded, or in a condition which would endanger or be likely to endanger other persons or other person's property. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3, 291E-61 et seq.)

§13-233-4 Traffic controls. All vehicular traffic shall comply with any lawful order, notice, signal, or direction of any regular or special police officer. When such traffic is controlled by signs and pavement markings, the signs and markings shall be obeyed unless a regular or special police officer directs otherwise. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-5 Speed restrictions. (a) Basic rules and maximum limits.

- (1) No person shall drive a vehicle on a roadway or in any parking lot maintained within a small boat harbor at a speed greater than is reasonable and prudent under the existing conditions [and without regard to the actual and potential hazards then existing]. [In every event] Vehicular speed shall be [so] controlled as [may be] necessary and with due care to avoid colliding with any person, vehicle, or other [conveyance on or entering the roadway or parking lot in compliance with legal requirements and the duty of all persons to use due care] structure.
- (2) Except when a special hazard exists that requires lower speed for compliance with paragraph (1) the limits specified in this section or established as authorized by this section shall be maximum lawful speeds, and

no person shall drive a vehicle on a roadway or in any parking lot within a small boat harbor at a speed in excess of these maximum limits[.]:

- (A) Ten miles per hour. Any pier, wharf, other structure, or parking lot.
 - (B) Fifteen miles per hour. Any roadway eighteen feet or less in width.
 - (C) Twenty five miles per hour. [on a]Any roadway where the speed limit has not been otherwise established.
- (3) The maximum speed limits set forth in this section may be altered as authorized in subsection (b).
 - (4) The driver of every vehicle shall, consistent with the requirements of paragraph (1), drive at an appropriate reduced speed when approaching and going around a curve, when traveling upon any narrow or winding roadway, when a special hazard exists with respect to pedestrians or other traffic by reason of weather or road conditions, and unless directed to stop by a police officer or traffic control device, when approaching and crossing an intersection.
 - (5) Whenever the department [shall]determines upon the basis of an engineering and traffic investigation that any maximum speed limit established in this section is greater than is reasonable or safe under the conditions found to exist at any horizontal or vertical curve upon any part of a roadway, the department may post a recommended safe speed thereat which shall serve as a guide to vehicle drivers at all times when[they are] using the road.

(b) Establishment of speed zones. Whenever the department [shall]determines upon the basis of an engineering and traffic investigation that any maximum speed [hereinbefore]set forth under subsection (a) is less than is reasonable under the conditions found to exist at any part of a small boat harbor roadway

system, the department may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. The maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate signs.

(c) Special speed limitation.

(1) No person shall drive any vehicle equipped wholly or partly with solid rubber tires at a speed greater than ten miles per hour.

(2) No vehicle transporting any explosive as cargo or part of a cargo shall be operated upon any roadway in a small boat harbor at a speed in excess of twenty miles per hour.

(d) Speed contest. It shall be unlawful for any person to engage in, or to aid or abet by whatever means, any motor vehicle speed contest or exhibition of speed within a small boat harbor.

(e) Speed restrictions not applicable to emergency vehicles. The speed restrictions set forth in this section shall not apply to an authorized emergency vehicle when responding to an emergency call, or when used in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-6 Parking. Except as otherwise authorized by the department, no person shall stop, park, or permit to remain halted, a motor vehicle in a small boat harbor:

(1) In front of a driveway or land side of a launching ramp;

(2) For the purposes of washing, polishing,

greasing, or repairing of a vehicle except for those minor repairs necessary to remove the vehicle to an authorized area or from a small boat harbor;

- (3) Other than in accordance with officially posted signs; or
- (4) For more than ~~[seventy-two]~~ 24 hours without a valid parking permit issued by the department, not to exceed a maximum of 120 hours. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-2, 200-4)
(Imp: HRS §§200-2, 200-4)

§13-233-7 Public parking. As may from time to time be prescribed by the department, no person shall use any public parking area without payment of parking fees and charges [in areas where the fees and charges are properly designated by posted signs] and may only park in areas designated by the department. The department may establish such areas by signage as convenient and efficient public use of a small boat harbor may dictate. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-8 Removal of vehicles. The department shall have the authority to detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

- (1) For nonpayment of parking charges when the vehicle is parked in parking areas operated by the department or authorized representative, in a small boat harbor;
- (2) Which has been parked continuously anywhere in a vehicular parking area operated by the department or authorized representative in a small boat harbor for a period [of more than seventy-two hours] exceeding the posted time limits, except when prior arrangements have been made therefor;

- (3) When the position or location of the vehicle in a small boat harbor creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department or authorized representative, of any vehicle legally parked at a small boat harbor, shall not be at the owner's risk and expense; [and]
- (4) When parked in violation of section 13-233-6; and[.]
- (5) When any vehicle is used in any way for commercial or business use for storage of equipment or other business-related activity without a valid permit issued by the department. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-2, 200-4)
(Imp: HRS §§200-2, 200-4)

§13-233-9 Application. These rules shall apply with equal force to motor vehicles on lease, rent, or loan to any person. The owner or operator of any motor vehicle using facilities or space within a small boat harbor shall be subject to all charges, rules, and conditions as prescribed by these rules. [Eff 2/24/94; comp
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-10 Parking in construction areas and on special occasion. The chairperson may whenever in the chairperson's judgment it is deemed necessary, prohibit or restrict the parking of any vehicle on either or both sides of any roadway, parking lot, or other location or portion thereof, constituting all or part of an area affected by construction, repairs, or maintenance activities, a part of the route of a parade or a procession, or on any special occasion, and also upon any roadway, parking lot, or other location adjacent thereto by the erection or placement of temporary signs setting forth such restrictions. When the signs are erected or placed prior to

construction, repairs, maintenance, parade, procession, or special occasion, it shall be unlawful to park or leave unattended any vehicle in violation of the signs. The department may remove or cause to be removed at the owner's expense, any vehicle left unattended or parked in violation of the signs. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-11 Repealed. [R 6/28/00]

§13-233-12 Repealed. [R 6/28/00]

§13-233-13 Operation, parking, or storage of bicycles or play vehicles. (a) This section is applicable only in Ala Wai and Keehi boat harbors. As used in this section, "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

(b) Effect of section.

(1) The parent of any child or the guardian of any ward shall not authorize or knowingly permit the child or ward to violate this section.

(2) This section applicable to bicycles and play vehicles shall apply whenever a bicycle or play vehicle is ridden, operated, parked, or stored within the confines of a small boat harbor.

(c) Bicycle tax. No bicycle shall be used for conveyance of any person within the confines of a small boat harbor unless the annual tax has been paid and a valid license tag is attached to the bicycle in accordance with section 249-14, Hawai'i Revised Statutes.

(d) Riding on sidewalks or piers. The department may erect signs on any sidewalk, roadway, pier, wharf, catwalk, or other location prohibiting the riding of bicycles thereon, and when such signs are in place, no person shall disobey the same.

(e) Parking or storage of bicycles. No person shall park, store, place, or leave a bicycle on catwalks, piers, sidewalks, roads, parking areas, or any other public area except in bicycle parking racks.

(f) Traffic and bicycle equipment laws applicable to persons riding bicycles. Every person riding a bicycle within the confines of a small boat harbor shall be granted all the rights and shall be subject to all the duties applicable to the bicycle operator and to the driver of a vehicle by chapter 291C (Statewide Traffic Code), Hawai'i Revised Statutes, which by reference is hereby incorporated in these rules and made a part hereof as though fully recited herein, except as to those provisions of chapter 291C which by their nature can have no application to a bicycle operator. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-14 REPEALED. [R]

§13-233-15 to §13-233-19 (Reserved)

SUBCHAPTER 2

PAID PARKING ZONES

§13-233-20 Establishment of paid parking[meter] zones. [Parking meter]Paid parking zones[are hereby] may be established at [the]small boat harbors [in the areas more particularly described in Exhibit 1 and shown on Exhibit 2, January 26, 1985, located at the end of this chapter]and facilities and shall be so designated by signage. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-21 Repealed. [R 6/28/00]

§13-233-22 Repealed. [R 6/28/00]

§13-233-23 Repealed. [R 6/28/00]

§13-233-24 REPEALED. [R]

§13-233-25 Repealed. [R 6/28/00]

§13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in paid parking [meter] zones equivalent to current city and county rates [at the rate of forty cents per hour during meter operating hours]. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-27 Charges for enclosure or obstruction of paid parking [meter] stall, incidental to construction, etc. (a) Before any person, other than any governmental agency, shall enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion thereof, incidental to erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure, or for other reasons, that person shall obtain a permit from the department and pay to the department a sum calculated at the rate [of \$2] currently being charged for each such parking [meter] stall for each day or fraction thereof, during which the stall shall be so enclosed or obstructed.

(b) No permit to enclose or obstruct a parking stall shall be issued to any person to whom the foregoing provision is applicable until the person shall have made a deposit of the calculated sum, based on the estimated number of days during which the parking stall shall be so enclosed or obstructed. The person shall notify the department immediately upon termination of the enclosure of obstruction. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-28 Harbor tenants - parking permits. Notwithstanding any other provisions of this

subchapter to the contrary, a person may park a motor vehicle in a parking stall in a pay-for-parking [meter] zone, in excess of the time limit and without payment for[depositing coins in the parking meter located adjacent to] the parking stall, if the person has been issued a parking permit and displays a valid parking sticker (decal) issued to that person by the department, on the left hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits, or has been issued a temporary parking permit and displays this temporary parking permit in or on the vehicle so as to be clearly visible from the outside. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-29 Eligibility for parking permits; fee per vehicle. (a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

<u>Eligible persons</u>	<u>Fees Per Vehicle</u>
(1) An owner holding a valid use permit (permittee) authorizing the mooring of the owner's vessel at the small boat harbor, and any co-owner of the vessel.	\$35 per [quarter] <u>month</u>
(2) The master, spouse of each owner and their legal dependents 18 years of age or older.	\$[1]35 per [quarter] <u>month</u>
(3) An owner or co-owner holding a valid use permit authorizing the mooring of the owner's vessel at the small boat harbor may secure a temporary parking permit[which in no event shall exceed 72 hours],	\$[2]10 for each 24-hour period or fraction at thereof

for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the small boat harbor.

- (4) An owner or employee of a firm, business, or organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to engage in a business or commercial activity at the small boat harbor.

\$[3]90 per
[quarter]
month

(b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

(c) Except as provided in subsection (a) (2), not more than one parking permit shall be issued to a person eligible for a parking permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4)
(Imp: HRS §§200-2, 200-4)

§13-233-30 Replacement of mutilated stickers.
The eligible holder of a parking sticker that becomes mutilated or illegible shall apply for and be issued a replacement sticker if the mutilated or illegible sticker is surrendered to the department. A fee of \$15 shall be paid prior to the issuance of a replacement sticker. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-31 Transfer of permits. The holder of a parking sticker may upon surrender of a parking sticker apply for and be issued another parking sticker to be applied to another vehicle owned by the holder. A fee of \$15 payable in advance shall be paid prior to the issuance of a new sticker. [Eff 2/24/94;

am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-32 Cancellation of permits. The holder of a valid parking permit who disposes of the vehicle for which the permit was issued or who otherwise desires to cancel a parking permit may obtain a credit or refund as appropriate for any remaining unexpired month or months, upon surrender of the parking sticker to the department. No credit or refund shall be given for portions of a month. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-33 Revocation of parking permits. The department reserves the right to further restrict the issuance of parking permits to those who observe the small boat harbors rules and make full and timely payments of fees and charges. A parking permit may be revoked as provided in section 13-231-6. Upon revocation the permittee shall surrender the parking sticker issued by the department. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-34 Violations and penalties. (a) It shall be a violation of this part for any person:

- (1) For failure to pay the posted fees. [To cause, allow, permit, or suffer any vehicle within that person's control to be parked, stopped, or standing in any parking stall for a consecutive period of time in excess of the parking time limit specified in section 13-233-24 for the parking meter zone in which the meter is located, irrespective of the number or amounts of the coins deposited in the meter, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department.
- (2) To permit a vehicle within the person's

control to be parked, stopped, or standing in any parking stall during meter operating hours in the parking meter zone in which the meter is located while the parking meter for the stall indicates by signal that the lawful parking time in the stall has expired, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department. This provision shall also not apply during the act of parking or during the necessary time which is required to deposit immediately thereafter a coin or coins in the meter.

- (3) To fail to deposit the proper coins and to set the timing mechanism in operation as required under sections 13-233-25 and 13-233-26, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department.]
- (([4]2) To park, stop, or stand any vehicle across any line or marking of a paid parking [meter]stall or in such position that the vehicle shall not be entirely within the stall designated by the lines or markings[, except that a vehicle which is of a size too large to be parked within a single designated parking meter stall shall be permitted to occupy two adjoining parking meter stalls when coins shall have been deposited in the parking meter stalls so occupied as is required in this subchapter for the parking of other vehicles in the stall].
- (([5]3) To park, stop, or stand a towing vehicle with a boat trailer attached in any non-designated vehicle/trailer paid parking [meter]stall.
- (([6]4) To permit another person not entitled thereto, to use or have possession of a parking sticker.
- (([7]5) To alter, forge, counterfeit, or imitate a

parking sticker.

- ([8]6) To possess or use a parking sticker, knowing it to have been altered, forged, counterfeited, or imitated.
- ([9]7) To avoid or attempt to avoid compliance with this section by affixing to a vehicle, a parking sticker not authorized by the department.
- ([10]8) To enclose, obstruct, or cause to be enclosed or obstructed any paid parking [meter]stall or portion thereof unless a permit has been obtained from the department as required in section 13-233-27.
- ([11]9) To deface, injure, tamper with, open or willfully break, destroy, or impair the usefulness of any parking [meter]pay station installed under the provisions of this part.
- ([12])To deposit or cause to be deposited in any parking meter any slugs, device or metal substance, or other substitute for lawful United States coins.
- ([13]10) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in a paid parking [meter]zone.

(b) A person who has violated this section may be fined as provided in section 13-230-4. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-35 to §12-233-39 (Reserved)

SUBCHAPTER 3

VESSEL OWNER PARKING ZONE

§13-233-40 REPEALED. [R]

§13-233-41 Repealed. [R 6/28/00]

§13-233-42 REPEALED. [R]

§13-233-43 REPEALED. [R]

§13-233-44 Violations and penalties. (a) It shall be a violation of this subchapter for any person:

- (1) To cause, allow, permit, or suffer any vehicle within that person's control to be parked[,] or stopped[,] or standing within vessel owner parking zone 1] in any small boat harbor or in non-designated vehicle/trailer parking unless the vehicle displays a valid parking sticker or temporary parking permit issued by the department.
- (2) To park, stop, or stand any vehicle across any line or marking of a parking space or in such position that the vehicle shall not be entirely within the stall designated by such lines or markings.
- (3) To permit another person not entitled thereto, to use or have possession of a parking sticker.
- (4) To alter, forge, counterfeit, or imitate a parking sticker.
- (5) To possess or use a parking sticker, knowing it to have been altered, forged, counterfeited, or imitated.
- (6) To avoid or attempt to avoid compliance with this subchapter by affixing to a vehicle, a parking sticker not authorized by the department.
- (7) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in any small boat harbor parking area[the vessel owner parking zone].

(b) A person who has violated this subsection may be fined as provided in section 13-230-4." [Eff

§13-233-44

2/24/94; am and comp

] (Auth:

HRS §§200-2, 200-4) (Imp: HRS §200-2, 200-4)

[May 1. 1985]

EXHIBIT "1"

PARKING METER ZONES ALA WAI SMALL BOAT HARBOR

(a) Parking zone "A." Beginning near the Ala Wai Canal at the northernmost corner of the end of the roadway leading to the work dock, zone "A" is defined approximately by the following boundaries:

- (1) 155 feet in the Diamond Head direction along the edge of the roadway, thence
- (2) 135 feet in the mauka direction along the edge of the roadway, thence
- (3) 50 feet in the Diamond Head direction across the roadway, thence
- (4) 175 feet in the makai direction along the edge of the roadway, thence
- (5) 435 feet in the Diamond Head direction along the edge of the roadway, thence
- (6) 50 feet in the makai direction, thence
- (7) 180 feet in the Diamond Head direction along the edge of the roadway, thence
- (8) 20 feet in the makai direction across the roadway, thence
- (9) 730 feet in the Ewa direction along the seawall, thence
- (10) 80 feet in the mauka direction along the seawall, thence
- (11) 130 feet in the Ewa direction along the seawall, thence
- (12) 20 feet in the mauka direction along the Ala Wai Canal to the point of beginning.
- (13) A 20-foot wide strip on the mauka side of the access road adjacent to the Ilikai Hotel. It begins at the corner of the access road and Hobron Lane, runs in the Diamond Head direction for 260 feet, and follows the curve in the roadway for approximately 230 feet.

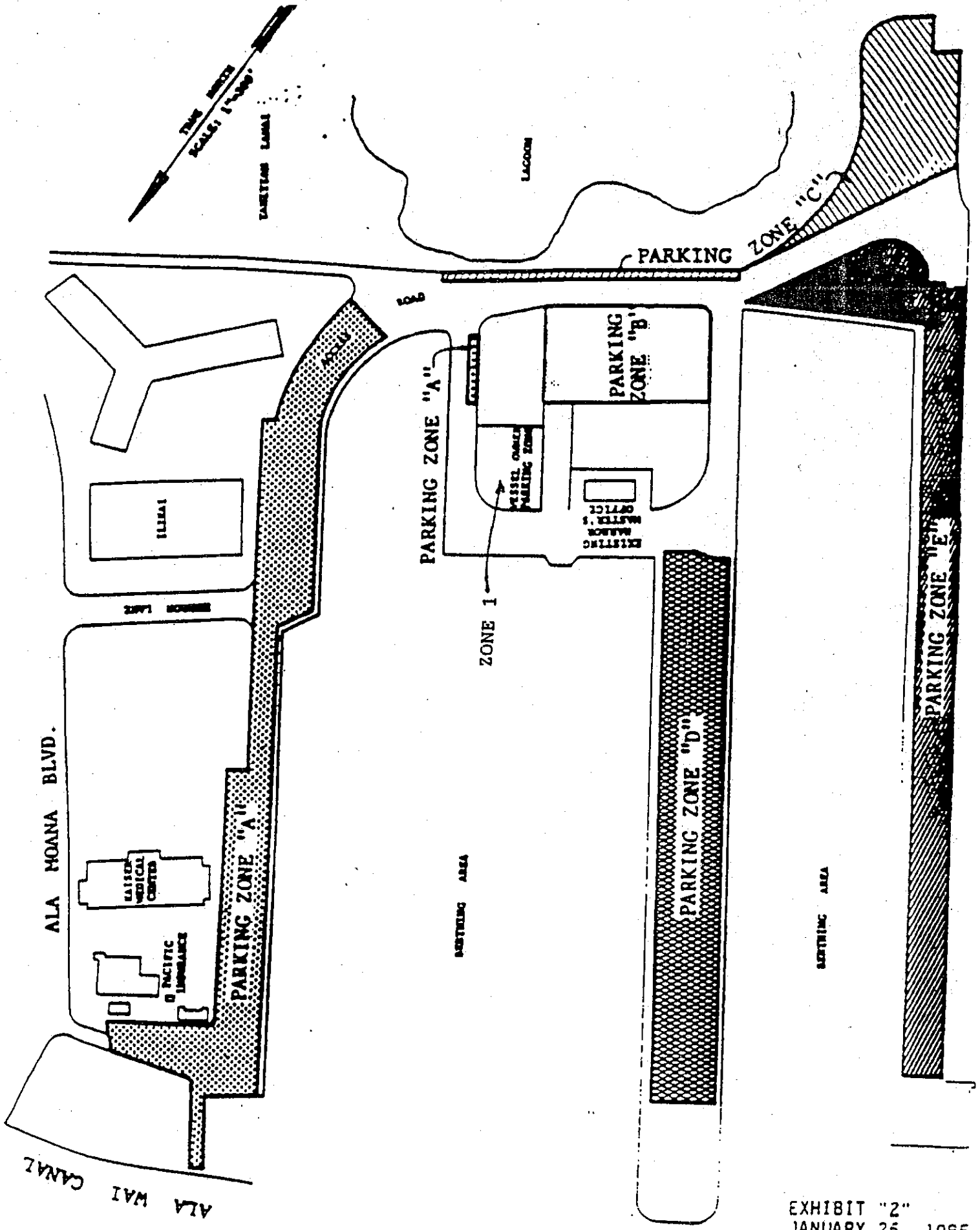


EXHIBIT "2"
JANUARY 26, 1985

EXHIBIT A

EXHIBIT "3"

VESSEL OWNER PARKING ZONE, ALA WAI BOAT HARBOR

Vessel owner parking zone 1.

Beginning mauka of the boat launching ramp at the northernmost corner along a 50-foot radius curve on the Diamond Head edge of the roadway, parking zone 1 is defined approximately by the following boundaries.

- (1) 90 feet in the Diamond Head direction along the edge of the roadway, hence
- (2) 100 feet in the makai direction, hence
- (3) 140 feet in the Ewa direction, hence
- (4) 48 feet in the mauka direction to and ending at the 50-foot radius curve.]

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-233, Hawai'i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawai'i Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Laura H. Thielen, Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General